

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Prittamdas Chela Baba Versus State of Rajasthan
Labh Das Malkan & ors.. & Anr.

S.B. Criminal Revision Petition No. 18/2003
against the order dated 21-12-2002 passed
by the Addl. Sessions Judge, Raisinghnagar
in Criminal Revision No.6/2002.

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Date of Order: June 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. H.S.S. Kharlia, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 21-12-2002 passed by the Additional Sessions Judge, Raisinghnagar, district Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 6/2002, whereby the Revisional Court, on a revision petition filed by non-petitioner No.2, while allowing the revision petition, set-aside the order dated 1-2-2002 passed by the Sub-Divisional Magistrate, Raisinghnagar and remanded the matter to the Sub-Divisional

Magistrate, Raisinghnagar under Section 145 (4) of the Code to record the evidence of the parties and decide as to which of the parties was in possession of the disputed property within two months just before the date on which the preliminary order was passed and thereafter to pass an appropriate order under subsection (6) of Section 145 of the Code. Aggrieved by the order impugned, the petitioners have filed the instant criminal revision petition.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also records of both the courts below.

Briefly stated, the facts of the case, to the extent they are relevant and necessary for decision of this revision petition are that a complaint was filed by the Station House Officer, Police Station, Ramsinghpur, district Sri Ganganagar against party No. 1 Suraj Munni Chela Baba Labh Das, the non-petitioner No.2 herein, and party No.2 Akas Munni Chela Baba Labh Das, petitioner No.2 herein, alleging therein that in respect of the land of Chak No.43-GB, Muraba No.42 measuring 9 Bigha, Muraba No.46 measuring 6 Bighas and 15 Biswas; Chak 7-AS Muraba No.198/453 measuring 15 Bigha and 14 Biswas;; Chak No. 42-GB, Muraba No. 53 measuring 13 Bigha and 10 Biswas; Chak 43-GB, Muraba Nos. 42 measuring 4 Bighas, Muraba No.46 (new No.48-A) measuring 6 Bigha and 5 Biswas, totalling

57 Bighas of land, there is a dispute between the parties relating to possession of the property, which is likely to result in breach of peace. On the said complaint, on 28-6-1996, the Sub-Divisional Magistrate, Raisinghnagar drew preliminary order under Section 145 of the Code, attached the land in dispute and appointed the Tehsildar, Sri Vijaynagar as the Receiver. The order of the Sub-Divisional Magistrate, Raisinghnagar came to be challenged before the Revisional Court and the order of the Revisional Court has been challenged before this Court. Various rounds of litigation have taken place including the revision before the Additional Sessions Judge, Raisinghnagar. The appointment of the Receiver came to be set aside by the Additional Sessions Judge, Raisinghnagar vide order dated 8-11-1996. By the order dated 19-12-1996, the Sub-Divisional Magistrate, Raisinghnagar directed to deliver the possession of the property in dispute to the party, from whom the possession was taken. Non-petitioner No.2 Suraj Munni filed a revision petition against that order before the Additional Sessions Judge, Raisinghnagar, which came to be dismissed on 20-1-1997. On a transfer petition filed by the non-petitioner, the matter was transferred by the order of the Additional Sessions Judge, Raisinghnagar to the Court of the Additional Collector (Adm.), Sri Ganganagar. It appears that the Additional Collector (Adm.), Sri Ganganagar recorded the evidence of the parties. The Additional Collector (Adm.), Sri

Ganganagar could not arrive at a conclusion as to which of the parties was in possession on the date of the order or just before two months prior to the date of passing the preliminary order and, therefore, directed the parties to approach a competent civil court to get their rights decided. It appears that instead of getting the rights decided by the parties from the civil court, an inquiry was carried out under Section 18 of the Rajasthan Public Trusts Act, 1959 by the Assistant Commissioner, Devasthan Department, Bikaner. The statement filed by the petitioners was found to be correct and the statement filed by the non-petitioner was not accepted. A revision petition filed by the non-petitioner against the inquiry report also failed. The order of the Additional Collector (Adm.), Sri Ganganagar directing the parties for obtaining declaration of rights from the competent civil court was challenged before the Revisional Court, which came to be dismissed, against which petitioner Pritam Das filed a miscellaneous petition under Section 482 of the Code, being S.B. Criminal Misc. Petition No.669/2000 and by the order dated 22-3-2001, the said miscellaneous petition also came to be dismissed.

From the record, it appears that the petitioners had filed a civil suit in a competent civil court seeking declaration of their right and title to the land in dispute and that civil suit has not been decided as yet and as such till date, the rights of the

parties have not been declared by a competent civil court. It appears that the matter was brought before the Additional Sessions Judge, Raisinghnagar by way of filing Criminal Revision Petition No.6/2002 and the record of the Sub-Divisional Magistrate, Raisinghnagar was called for. From the record called from the Sub-Divisional Magistrate, Raisinghnagar, it nowhere appears that the Sub-Divisional Magistrate, Raisinghnagar recorded the evidence of the parties as envisaged under Section 145 (4) of the Code and, therefore, no order under Section 145 (6) of the Code was passed by the Sub-Divisional Magistrate, Raisinghnagar. The facts that the case having been transferred from the Court of the Sub-Divisional Magistrate, Raisinghnagar to the Additional Collector (Adm.), Sri Ganganagar and the evidence recorded by the Additional Collector (Adm.), Sri Ganganagar, were not brought to the notice of the Sub-Divisional Magistrate, Raisinghnagar and in these circumstances, the Revisional Court remanded the case to the Sub-Divisional Magistrate, Raisinghnagar for recording the evidence and decide as to which of the parties was in possession of the property two months just prior to passing the preliminary order.

From the material on record, it is more than clear that the matter was transferred to the Additional Collector (Adm.), Sri Ganganagar on a transfer petition filed before the Sessions Judge, Sri Ganganagar and thereafter the Additional

Collector (Adm.), Sri Ganganagar recorded the evidence of the parties and on appreciation of the evidence, the Additional Collector (Adm.), Sri Ganganagar could not come to the conclusion as to which of the parties was in possession of the disputed property within two months just prior to the date of passing the preliminary order and, therefore, directed the parties to approach to the competent civil court and obtain a declaration of their respective rights to possession the property in dispute and till then the property in dispute was ordered to remain under attachment and in possession of the Receiver. It appears that the proceedings before the Additional Collector (Adm.), Sri Ganganagar in Criminal Miscellaneous Case No. 12/1997 were not brought to the notice of the Revisional Court. In this view of the matter, it cannot be said at this stage that by the inquiry held by the Assistant Commissioner, Devasthan Department, Bikaner, it has finally determined and declared the rights of the parties. What is borne-out from the order dated 18-6-1998 passed by the Additional Collector (Adm.), Sri Ganganagar is that the parties were directed to approach a competent civil court and get their respective rights declared.

The expression "civil court" would not mean an inquiry before the Assistant Commissioner, Devasthan Department, Bikaner. In *Vithoba Balaji Ghodke & ors. Vs. Valkrishna Ganesh Bhalerao & ors.*, AIR 1968 Bombay 14, while

considering the provision of Section 76 of the Bombay Public Trusts Act and Section 2 (4) CPC, the Bombay High Court held that the Assistant Charity Commissioner, Deputy Charity Commissioner and Charity Commissioner are not "court" and they are not included in the definition of the "court" under Section 2 (4) of the Code of Civil Procedure. They are the authorities constituted under the Public Trusts Act and perform functions of quasi-judicial nature. By the order dated 18-6-1998 passed in Criminal Miscellaneous Case No. 12/1997, the Additional Collector (Adm.), Sri Ganganagar, on appreciation of the evidence produced by both the parties before it, came to the conclusion that on oral and documentary evidence produced by the parties, it is difficult to conclude and declare that which of the parties was in possession just prior to two months from the date of passing preliminary order and, therefore, thought it just and proper, in the facts and circumstances of the case, that until parties get their rights declared as to which of the parties is entitled to possession of the disputed property by a competent civil court and until the competent civil court declares the rights of the parties, the disputed property shall remain attached and in the custody of the Receiver and the SHO, Police Station, Ramsinghpur was appointed as the Receiver to take possession of the property in dispute, as also the Tehsildar (Revenue), Sri Vijaynagar was appointed as the Receiver to manage the land in

dispute till the rights of the parties are decided by a competent civil court. The order dated 18-6-1998 was challenged before the Revisional Court by filing a revision petition. However, this order has been maintained by the Revisional Court. Against the order of the Revisional Court, Criminal Miscellaneous Petition No.669/2000 was filed. Considering every aspect of the matter, this Court, by an elaborate order dated 22-3-2001, dismissed the miscellaneous petition and held as under:-

"That being the position, no interference is called for in the orders of the courts below. It has been ordered that as and when the order of the competent civil court is produced, the rights of the parties will be recognised."

It was further held that until and unless an order of the competent authority is produced before the authorities, the possession has been ordered to remain with the Receiver and no interference is called for in the order of continuance of Receiver.

It appears that by the order dated 1-2-2002, the Sub-Divisional Magistrate, Raisinghnagar directed the Tehsildar, who was appointed as the Receiver, to hand-over the possession of the disputed property to petitioner Pritam Das. That order came to be challenged by the non-petitioner No.2 before the Revisional Court. The Revisional Court set-aside the order of the Sub-Divisional Magistrate, Raisinghnagar dated 1-2-2002. In my view, the order dated 1-2-2002 passed by the Sub-Divisional

Magistrate, Raisinghnagar is without jurisdiction and contrary to the earlier order passed by the Additional Collector (Adm.), Sri Ganganagar dated 18-6-1998 in Criminal Misc. Case No. 12/1997, which was affirmed by the Revisional Court as also not interfered by this Court vide order dated 22-3-2001 passed in Criminal Misc. Petition No. 669/2000. The order dated 18-6-1998 passed by the Additional Collector (Adm.), Sri Ganganagar directing the parties to approach a competent civil court and get their rights decided and till then the property in dispute shall remain attached and in the custody of the Receiver, has attained the finality by the order dated 22-3-2001 passed by this Court and thereafter it was not open for the Sub-Divisional Magistrate, Raisinghnagar to direct the Receiver to hand-over the possession of the property in dispute to petitioner Pritam Das. The order of the Sub-Divisional Magistrate, Raisinghnagar dated 1-2-2002 is per se erroneous, illegal and contrary to the provisions of law and, therefore, was liable to be set aside and the Revisional Court, in my view, has rightly set aside the order dated 1-2-2002 though on different premises, i.e. directing the Sub-Divisional Magistrate, Raisinghnagar to record the evidence under Section 145 (2) Cr.P.C. and decide the case afresh under Section 145 (6) Cr.P.C., to this extent, the order of the Revisional Court is contrary to the facts on record. It appears from the perusal of the order of the Revisional Court dated

21.12.2002 that none of the parties brought to the notice of the Revisional Court that the evidence of the parties have been recorded by the Additional Collector (Adm.), Sri Ganganagar in Criminal Misc. Case No.12/1997 on the case being transferred to that Court and the matter had finally been decided by that Court vide order dated 18-6-98 and thereafter it was only the stage when the parties could get their rights determined and declared by a competent civil court and till then no proceeding was required to be initiated by the Sub-Divisional Magistrate, Raisinghnagar. It appears that the Sub-Divisional Magistrate, Raisinghnagar has not cared to notice the order dated 18-6-1998 passed by the Additional Collector (Adm.), Sri Ganganagar, which was affirmed by the Revisional Court as also by this Court vide order dated 22-3-2001.

In view of the aforesaid discussion, it is clear that a civil suit has already been filed and the civil court has not determined and declared the rights of the parties. Thus, the rights of the parties have not been recognized by the competent civil court till date and unless and until the rights of the parties are declared and decided by the civil court, the property in dispute has to be remained attached and in the custody of the / Receiver.

In the circumstances, therefore, the impugned order dated 1-2-2002 passed by the Sub-Divisional Officer,

Raisinghnagar in Criminal Case No. 8/1996 deserves to be set aside being without jurisdiction and contrary to the decision of the Additional Collector (Adm.), Sri Ganganagar, which has been affirmed by the Revisional Court as also by this Court. More so, Criminal Case No.8/1996, on being transferred by the order of the Additional Sessions Judge to the Court of Additional Collector (Adm.), Sri Ganganagar from the Court of the Sub-Divisional Magistrate, Raisinghnagar, the Sub-Divisional Officer, Raisinghnagar became functus officio. It also appears from the record that the record of the Additional Collector (Adm.), Sri Ganganagar has never been returned by the Sub-Divisional Magistrate, Raisinghnagar. It is strange enough how the Sub-Divisional Magistrate, Raisinghnagar assumed the jurisdiction to the case which has already been taken away from his Court by transferring the same to the Court of the Additional Collector (Adm.), Sri Ganganagar. However, the impugned order directing the Sub-Divisional Magistrate, Raisinghnagar to record the evidence of the parties and to declare which of the parties was in possession over the property in dispute just two months prior to the date of passing the preliminary order, being erroneous, is set-aside.

Consequently, the impugned order dated 21-12-2002 passed by the Revisional Court setting aside the order of the Sub-Divisional Officer dated 1-2-2002 is maintained. However,

the direction of the Revisional Court to the Sub-Divisional Magistrate, Raisinghnagar to record the evidence of the parties under Section 145 (4) Cr.P.C. and to pass an order under Section 145 (6) Cr.P.C., is quashed and set-aside. In consequence to this, the disputed property shall remain attached and in the custody of the Receiver appointed by the Additional Collector (Adm.), Sri Ganganagar vide order dated 18-6-1998, which was maintained upto this Court vide order dated 22.3.2001 till declaration of the rights of the parties by a competent civil court. With these directions, the revision petition stands dismissed.

(H.R. PANWAR), J.

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